

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of:)	
)	
Request for Review and/or Waiver)	
)	CC Docket No. 02-6
by)	
)	
Marlington Local School District)	
Alliance, OH)	

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Marlington Local School District (“MLSD”), by and through its duly authorized E-rate consultant, Educational Funding Group, Inc. (“EFG”) (CRN 16043587), respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) grant it a Waiver pursuant to 54.719 through 54.723 of the Commission’s rules.¹

More specifically, MLSD respectfully requests that the Commission extend the invoice deadline for FRN 1699097012 and allow it to file an FCC Form 472 Billed Entity Applicant Reimbursement (“BEAR”). As detailed below, this Request for Waiver was necessitated by a USAC/EPC system error.

¹ 47 C.F.R. §§ 54.719–54.723

Application Information

Billed Entity Number:	129644
FCC Form 471 Application Number:	161030265
Funding Request Number:	1699097012
Date of USAC RFCDL:	July 31, 2018
Service Provider:	ACY Communications SPIN: 143005501

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SUMMARY OF ISSUE ON APPEAL

This Request for Review and/or Waiver is being filed to review the adverse result of EPC/USAC errors that prevented a corrective SPIN change from being filed, which in turn, prevented a BEAR from being timely submitted for FRN 1699097012. The matter was first appealed to USAC, which appeal was denied for the following reason:

Invoices must be postmarked no later than 120 days after the last date to deliver service, or 120 days after the date of the Form 486 Notification Letter, whichever is later. You did not demonstrate otherwise in your appeal. Therefore, your appeal is denied.

STATEMENT IN SUPPORT OF APPEAL

The timeline of events is as follows:

- On October 29, 2017 an invoice deadline extension request was timely submitted for FRN 1699097012 using the USAC deadlines tool in the BEAR system. Because the original invoice deadline of January 28, 2018 fell during the filing window, EFG sought to avail itself of the 120-day extension permitted under the Modernization Order.
 - That same day EFG received an email from USAC granting the deadline extension until May 29, 2018. A copy of the email from USAC is attached as Exhibit “A”.
- On February 27, 2018 EFG downloaded a report from USAC’s FRN status tool, which confirmed that the last date to invoice for FRN 1699097012 was May 29, 2018. An abridged copy is attached as Exhibit B and a full copy of the original download is attached as Exhibit C.
- On May 24, 2018, while preparing to file the BEAR, EFG discovered that the incorrect SPIN had been used in the Form 471 (the vendor had two SPINs, but the one that was used on the Form 471 did not have a current SPAC).
 - A corrective SPIN change was attempted, but was unable to be submitted because the FRN no longer appeared in EPC. A call was made to the Customer Service Bureau (“CSB”) to troubleshoot the issue and was assigned Case #238071.
 - The CSB representative checked the FRN status tool and said that the last date to invoice was showing as February 27, 2018.
 - The CSB was unable to offer any explanation as to how, when or why the deadline date changed.
- February 27, 2018 was a date that had never previously shown as a deadline for FRN 1699097012;
- Somewhere between February 27, 2018 and May 24, 2018 USAC inexplicably and unwarrantedly changed the deadline from May 29, 2018 to February 27, 2018.

- MLSD relied on the correctness of the May 29, 2018 deadline date in USAC's confirmation email of October 29, 2017, which matched the information on the FRN Status Tool on February 27, 2018.
- USAC's actions and/or system errors resulted in MLSD not being able to submit a corrective SPIN change and a BEAR.
- EFG is aware of other applicants who experienced similar deadline issues during this same time period.

Neither USAC nor CSB offered any explanation whatsoever as to how or why on February 27, 2018 the FRN status tool would show an invoice deadline of May 29, 2018, and on May 24, 2018 show a deadline of February 27, 2018. Since it was obviously something in USAC's internal systems that created this state of affairs, we request the Commission to direct USAC to take any and all steps necessary so that MLSD may file a corrective SPIN change and submit the BEAR for FRN 1699097012.

The Commission has recently addressed several other requests for waiver that are similar in nature to this one.² Like those, this Request for Review and/or Waiver would not have been necessary if USAC/EPC systems had been working properly or if USAC tried to resolve its system discrepancies and their adverse impact on MLSD rather than requiring MLSD to file with the Commission. This is yet one more example of how USAC continues to repeatedly disavow responsibility for its actions and instead places the burden on applicants, and on the Commission, rather than trying to resolve known or suspected issues before rendering a decision. To the significant detriment of many applicants, USAC's inability and/or unwillingness to correct its own mistakes has become more the norm than the exception.

² Streamlined Resolution of Requests Related to Actions By the Universal Service Administrative Company, CC Docket No. 02-6, WC Docket No. 06-122, Public Notice, DA 18-672, at 4 n.11 (rel. June 29, 2018)

FCC precedent has recognized that a rule may be waived where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). In addition, the Commission has recognized that it may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. It has deemed a waiver to be appropriate if special circumstances warrant a deviation from the general rule, where such deviation would better serve the public interest than strict adherence to the general rule. *WAIT*, supra. MLSD stands to suffer financial hardship if the incorrect invoice deadline is strictly enforced. A waiver would afford MLSD the opportunity to file the necessary corrective SPIN change and obtain the reimbursements for FRN 1699097012 to which it would have been entitled had USAC performed its functions correctly. MLSD believes that the issues it encountered with the USAC systems, coupled with USAC's inability to resolve or even explain those issues, constitute special circumstances sufficient for the Commission to grant a waiver.

CONCLUSION

Throughout its application process, MLSD acted in good faith and demonstrated compliance with E-rate program rules and regulations. It followed all core E-rate program requirements and committed no fraud, abuse or waste of E-rate funds.

For the reasons stated above, and to better serve the public interest and the interests of the students of MLSD, MLSD respectfully requests that the Commission grant it a waiver of the invoicing deadline for FRN 1699097012 so that MLSD may submit its corrective SPIN change

and BEAR, and to the extent necessary, waive Section 54.514(a) and (b)4 , and waive any other rules necessary to effectuate its grant of this request for waiver.

Thank you for your consideration.

Linda Schreckinger Sadler

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On behalf of Educational Funding Group